

Cause of the War—Proclamation—Arbitrary Arrests.

S P E E C H

OF

HON. GEORGE I. POST,

OF

C A Y U G A

In the House of Assembly, March 3d, 1863.

The Governor's message being the special order Tuesday evening, March 3d, 1863, Mr. Post, of Cayuga, being entitled to the floor, addressed the Committee of the Whole as follows:

Mr. CHAIRMAN:

At the very threshold of this debate I desire to say that I shall divest myself of all personal and partisan feeling. At the present time, next to the rebels in arms against the Government, our danger lies in the direction of partisan feeling and party spirit. I entertain the most kindly personal feeling, not only toward the Governor of the State, but towards every member of his party on the floor of this House. To me it is a source of pleasure that, notwithstanding the sharp and protracted contest upon the question of the organization of the House, the friendly personal relations of the members remained undisturbed, a circumstance highly creditable to the individual members of the House.

I think all will agree that if there ever was a time in the history of our country, when partisan bitterness should be buried and when the fires of patriotism should be kindled anew in the hearts of the American people, that time has certainly arrived. Sir, the value of party is as dust in the balances against the value of our nationality. Who is there so base as not to be willing and ready at a time like this to abandon his party for his country? For myself, I say, in this hour of our national extremity and peril, I stand by the Government of my country; I stand by the Constitution and the Union; I stand by Abraham Lincoln, the President of the United States; I stand by the President as the consti-

tutional Commander-in-Chief of the army and navy of the United States.

Mine is no conditional allegiance. When I entered this Chamber I took a solemn oath to support the Constitution of the United States. I done so without any reservations. Sir, this sort of conditional loyalty, accompanied with "ifs" and "buts," is little less than hypocrisy, bordering on disloyalty. I speak in a general sense. I question no man's motives. I leave every member on this floor and elsewhere to settle that question with himself and his God. I shall speak my own sentiments; I shall do so with entire freedom. I speak in the exercise of my legal and constitutional right, untrammelled, I trust, of everything except my convictions of right and duty.

The Governor's message is a somewhat extraordinary document—extraordinary for what it does, contain, and extraordinary for what it does not contain. In its discussion I shall differ essentially, perhaps radically, from its conclusions. I shall do so, however, without partisan heat or party rancor. I stand by the principles of Republican Government. I believe in the capacity of the American people for self-government. For myself, personally, I desire to say, that by ancestry, by birth, by education, by association, by feeling, by thought, by word and by deed, I am for Republican institutions. I believe in the right of the people to make their own Constitution and laws and to choose their own rulers. I believe in the doctrines of the immortal Declaration of Independence, "that all men are created equal; that they are endowed by their Creator with cer-

tain inalienable rights; that among these are life, liberty and the pursuit of happiness." I plant myself upon the doctrine of equality of rights. This "carping" about "glittering generalities" of which we hear, comes from the enemies of Republican Government; from those who deny the doctrine of equality of rights. I stand firmly by the great principles of the Constitution. The framers of that great instrument—immortal men—in setting forth the objects had in view, said "it was to form a more perfect Union; to establish justice; to insure domestic tranquility; to provide for the common defense; to promote the general welfare and to secure the blessings of liberty to ourselves and our posterity," that they ordained and established the Constitution for the United States of America. The great ideas were Union, Justice, Tranquillity, Defense, Welfare and Liberty. I stand by those great ideas.

The various provisions of the Constitution were made to secure these objects. The division of the powers of the Government by the Constitution into three branches, the Executive, the Legislative and the Judicial, and the grants of power and the limitation of power, all had in view the great objects above enumerated. The Constitution of the United States I regard as the embodiment of the great principles of Republican Government.

In this discussion I shall endeavor to keep within plain view of these great principles. The Governor, in his Message, after making a few sensible remarks about our State affairs, launches out upon the ocean of National affairs.

After a few remarks of a very general character, the Governor comes to the question of the causes of the war. He says, in substance, that slavery was not the cause of controversy. He states, first, that "we are to look for the causes of this war in a pervading disregard of the obligations of laws and constitutions." Second, "in disrespect for constituted authorities." Third, "and above all in the local prejudices which have grown up in two portions of the Atlantic States, the two extremes of our country." These are the positions taken by the Governor. I shall examine them—I shall examine them in the light of history. I think the Governor is altogether mistaken, and having fallen into a fundamental error in the beginning, having mistaken the true cause of our National disorders, is almost by necessity mistaken as to the remedies to be applied.

Sir, the true cause of this war is too plain to be mistaken; plain to all except those, "who, having eyes, see not; and having ears, hear not." And

"Although convinced against their will,
They are of the same opinion still."

Sir, the cause of this controversy is slavery. The cause of the disregard of the obligations of laws and Constitution is slavery. The cause of disrespect of constituted authorities has grown out of slavery. The local prejudice between the sections of our country, the North and the South, has grown out of no other cause than

slavery. In my judgment (to use a very mild expression) the Governor has done himself great injustice by asserting in substance that slavery has been the subject, not the cause of controversy.

I submit, Sir, that the cause of this controversy is the same that disorganized the Democratic party at the Charleston Convention in the year 1860; the same cause that defeated the election of Stephen A. Douglas that same year; the same cause that demanded a Slave Code for the Territories; the same cause that demanded that the free soil of Kansas and Nebraska should be cursed with human bondage, and a sacred compact should be broken (the Missouri Compromise), the same cause that practically denies freedom of speech, and of the press, where it exists; the same cause that demanded the annexation of Texas to the Union, to extend its border and strengthen its influence; the same cause that defeated the nomination of Mr. Van Buren in 1844; the same cause that, since 1844, has defeated the nomination of every man in the Democratic party who would not submit to its embrace, the embrace of slavery; the same cause that has been the subject and the burden of nearly every political speech for the past twelve years, either in its denunciation or its palliation or excuse; the exciting cause of the angry discussions in Congress and out of Congress for the last ten or fifteen years, and has finally culminated in open rebellion against the Government. Away with this splitting hairs by the Governor that "slavery has been the subject not the cause of controversy."

Now let us have the light of truth and history on the subject. Let us have the facts. We will at first go back to the Democratic Convention held at Charleston in 1860. We will see what it was that disorganized the Democratic party. I especially invite the attention of the Democratic portion of this House to the transactions of that convention, and when the facts are presented I shall ask them if it was not slavery that was the exciting cause of the contentions of that body, and if it was not the cause of its disorganization. The facts that I shall present you, will find in the files of the *Atlas & Argus*, which I suppose will be taken as good authority by your side of the house.

After the assembling of the delegates, and when the friends of Stephen A. Douglas had canvassed the field and found that a majority of the delegates were in favor of his nomination, a letter was shown by Mr. Slidell, of Louisiana, from Jeff. Davis, of Mississippi, advising the delegation from Mississippi, in the event of the nomination of Mr. Douglas, to withdraw from the convention.

Here then in the early part of the proceedings of that convention appeared the two leading spirits of this infamous rebellion, Jefferson Davis the great rebel chief sending a letter by his subsequent minister to France, now engaged in an effort to bring on a foreign war. And why this letter of Jefferson Davis, advising the delegation of his own State (Mississippi) to with-

draw in the event of the nomination of Mr. Douglas? It will be remembered that Mr. Douglas was the great defender of what was called popular or *squatter* sovereignty. The doctrine that he contended for was that the people of a Territory had a right to have such institutions as they desired, and as he said in the Kansas and Nebraska Bill, it was not the object of that bill to legislate slavery out of the territory or into the territory, but to leave the people thereof perfectly free to say by their own legislature whether they would have slavery or not.

It is a well known fact that four years before, in 1856, the Cincinnati platform contained that doctrine. It was the principal plank of the Democratic platform of that year. Mr. Douglas no doubt was a sincere believer in the soundness of that principle. The Northern Democracy could be rallied on that principle. But something more was demanded. Slavery had made a hellish attempt to get upon the virgin soil of Kansas, and had been foiled in the attempt. The doctrine of "Squatter Sovereignty" was therefore denounced by the institution of slavery everywhere. Slavery now demanded Congressional protection in the territories, or as Mr. Douglas characterized it, a "Slave Code" for the territories. He (Mr. Douglas) told Southern men that he would go into the field upon any platform that the Democratic party had in its past history stood upon. It was of no use, slavery demanded a "Slave Code" for the territories and would take nothing less. This Mr. Douglas and the Northern Democracy refused. In that Charleston Convention the Northern Democracy offered to go into the field upon the principles of the Cincinnati platform, adding a resolution that all rights of property were judicial in character, and pledged themselves to abide the decisions of the supreme court on the subject. But it was all of no avail. Slavery would not even risk itself in the hands of the Supreme Court of the United States. Like a spoiled child it had had its way so long that it would be satisfied with nothing except what it demanded: Nothing short of a "Slave Code" for the territories would satisfy it. When the crisis came in the convention it was found the Northern Democracy would not yield to such humiliating demands.

What was the next chapter in the history of that transaction? I will tell you what, and I will give the *Atlas* & *Argus* for authority; you will find the proceedings reported there. The Gulf slave States seceded from the convention. Yes, Sir, at the dictation of Jeff. Davis, Slidell, Toombs, Wigfall, Yancey and other ringleaders of the rebellion, moved and instigated by this devil, Slavery, the Gulf States seceded from your Democratic Convention, and broke down your party.

Now, let us see the precise ground taken by those states in that convention as they withdrew one after another, and then tell me, if you can, that it was not slavery that lay at the bottom. You, the "Northern Democracy," were distinctly

told that they regarded squatter-sovereignty equally as subversive of Southern rights as the Wilmot proviso. Mr. Burrows, of Arkansas, in a speech to the convention said, "he considered the Northern Democrats worse than the Black Republicans. He did not care whether the Black Republicans whipped them or they whipped the Black Republicans. Of the two, he considered the Black Republicans as the most open and manly. As to Douglas, he would not support him even if he was nominated. He considered him as great an enemy to the South as Mr. Seward." After relieving themselves of their real sentiments, they next withdrew from the convention, and then presented their protests. Now mark the grounds of their protests, and then tell me if it was not slavery? The State of Alabama was the first in order to present her protests, and other states followed substantially upon the same ground. I propose to read the protest and the principal resolutions. Mr. Walker, of Alabama, said: "Mr. President, I am instructed by the Alabama delegation to submit to this convention a communication, and with your permission I will read it.

To the Hon. Caleb Cushing, President of the Democratic National Convention, now in session in the City of Charleston, South Carolina:

"The undersigned delegates, representing the State of Alabama in this convention, respectfully beg leave to lay before your honorable body the following statement of facts:

"On the 11th day of January, 1860, the Democratic party of the State of Alabama met in convention in the City of Montgomery and adopted, with singular unanimity, a series of resolutions herewith submitted:

"1st. Resolved by the Democracy of the State of Alabama in convention assembled, *That, holding all issues and principles upon which they have heretofore affiliated and acted with the national Democratic party to be inferior in dignity and importance to the great question of slavery, they content themselves with a general re-affirmance of the Cincinnati platform as to such issue, and also indorse said platform as to slavery, together with the following resolutions:*

"2d. Resolved further, *That we re-affirm so much of the first resolution of the platform adopted in the convention by the democracy of this state on the 8th of January, 1856, as relates to the subject of slavery, to wit: The unqualified right of the people of the slaveholding states to the protection of their property in the states, in the territories and in the wilderness in which territorial governments are as yet unorganized.*

"3d. Resolved further: *That in order to meet and clear away all obstacles to a full enjoyment of this right in the territories, we reaffirm the principle of the 9th resolution of the platform, on the 14th of February, 1848, to wit: That it is the duty of the General Government by all proper legislation to secure an entry into those territories to all the citizens of the United States, together with their property of every description, and that the same should be protected by the United States while the territories are under its*

authority. I will omit the 4th, 5th, 6th, 7th 8th and 9th resolutions, which in substance deny the power of Congress to prohibit the extension of slavery in the territories, and also deny that the people of a territory have a legislative right to prohibit slavery before the formation of their State Constitution. I will now read the 10th resolution which will speak for itself: "Resolved further, That our delegates to the Charleston convention are hereby expressly instructed to insist that said convention shall adopt a platform of principles recognizing distinctly the rights of the South as asserted in the foregoing resolutions; and if the said national convention shall refuse to adopt, in substance, the propositions embraced in the preceding resolutions prior to nominating candidates, *our delegates to said convention are hereby positively instructed to withdraw therefrom.*"

Here then is what was distinctly demanded by slavery from the State of Alabama. "A slave code for the territories," and a denial of power in Congress or the territorial legislature to restrict slavery. The delegates were distinctly instructed that if their demand was not granted, they should withdraw from the convention. Here the doctrine was distinctly put forth, that all issues and principles upon which they had before affiliated with the Democratic party were *inferior in dignity and importance to the great question of slavery.* They "seceded" from your Democratic convention. What next? Why, I will tell you what. The gulf states, which had become thoroughly besotted with slavery, one after another, "seceded" from your convention. Mississippi, the home of Jeff. Davis, was the next in order after Alabama to withdraw. She also demanded a slave code for the territories. South Carolina, the hot-bed of treason, was the next in order that withdrew. This infamous State, the birth-place of nullification, went out with a great flourish of trumpets. She, of course, would accept nothing but what she asked, and that, of course, was a "slave code" for the territories. Next, Florida retired, then Texas withdrew. Arkansas retired, Georgia followed suit. Louisiana would remain no longer, and away she went with her erring sisters. The bone of contention between the Northern and the Southern Democracy was simply this, the Southern Democracy demanded a slave code for the territories, and the Northern Democracy stood on the ground of squatter sovereignty. The South, because she could not succeed any longer in controlling your national conventions, as she had done from the defeat of Martin Van Buren in your national convention of 1844 down to your Charleston convention of 1860, broke up your party. She refused absolutely to affiliate any longer with you. You adjourned your convention at Charleston without making a nomination in hopes that time and reflection would show them the error of their way. But, alas! When you re-assembled at Baltimore after an adjournment of several weeks, you found them in the same condition as they were at Charleston. They absolutely refused to meet with you in

convention, and after you had remained at Baltimore for several days in a vain attempt to induce them to return to your party, and after exhausting all efforts at a reconciliation, you nominated Stephen A. Douglas. They nominated John C. Breckinridge, a man of their choice, and now a rebel in arms against the Government. Mr. Douglas, the idol of the Northern Democracy, received the electoral vote of only a single slave state (Missouri). Now, will any Democrat on the floor of this House or elsewhere in the light of these facts pretend that slavery was not the cause of the disorganization of the Democratic party of 1860? I apprehend not, —the facts are too convincing. Well, Sir, we shall not stop even here. The political conventions of 1860, by their nominations and resolutions, presented three distinct issues to the people of the country. The Republican party stood upon the "Jeffersonian Proviso," and maintained that Congress possessed the constitutional power to prevent the extension of slavery into the territories.

The northern branch of the Democratic party presented the issue of "Squatter Sovereignty," insisting that the people of a territory possessed the power to exclude or admit slavery as they thought proper.

The southern branch of the Democratic party, the "seceders" from the Charleston Convention, stood upon the ground that slavery should have congressional protection in the territories, and denied the right of Congress to exclude it therefrom, and also denied the right of the people while in their territorial situation to legislate on the subject at all. These were the issues before the people in 1860. Abraham Lincoln stood upon the ground of that time-honored "Jeffersonian Proviso;" Stephen A. Douglas stood upon "Squatter Sovereignty;" John C. Breckinridge stood upon the "Slave Code" platform, that had been constructed by Jeff. Davis and the rest of the conspirators.

The people, through the instrumentality of the elective franchise, under and by virtue of the Constitution and the laws, decided in favor of Abraham Lincoln. He was duly, legally, constitutionally elected President of the United States. As soon as it was known that Abraham Lincoln was thus elected, these same conspirators against the Democratic party conspired against the country.

This you cannot deny, nor can you show that it was for any other reason. The conspirators the same, the cause the same. They determined to have a government whose corner-stone should be slavery. They did not wait until the newly-elected President took his seat. Mr. Lincoln was elected in November, and did not and could not assume the functions of his office by the Constitution until the following March. In the meantime the Government of the United States was in the hands of a poor, imbecile old man, James Buchanan, surrounded by thieves and traitors. The thief and traitor, Floyd, Buchanan's Secretary of War, was quietly removing the arms and military stores from the free states to

the slave states—and while his Secretary of the Treasury was endeavoring to ruin the credit of the country, and Thompson was acting the part of a spy and an informer—Jeff. Davis, at the head of the conspirators, organized their rebel government. That government was organized, and Jefferson Davis was inaugurated President on the 18th day of February, 1861, and assumed the duties of Commander-in-Chief of the armies of the seceded states. I have no time to dwell upon the details of this conspiracy. It was organized while James Buchanan was yet President of the United States. Abraham Lincoln made his way to Washington, and was obliged (I say it with shame) to travel in disguise, and on the fourth day of March was inaugurated President of the United States.

This conspiracy, thus organized, committed on the 12th day of April, 1861, overt acts of treason by levying war against the United States. Governor Seymour cannot, nor can his partisans on this floor, change the truth of history. I do not envy that man his reputation on the page of history who asserts that slavery was the subject, not the cause of this rebellion. Sir, the truth of history will brand slavery with the paternity of our National peril and humiliation. The “nefarious institution,” the “sum of all villainies”—the disturber of our National repose—the disgrace of our land and country—the mother of this devilish conspiracy; aye, Sir, the assassin now grappling at the throat of our Nationality, cannot escape behind the rhetorical flourish of even the Governor. I shall drag this criminal to the bar of justice and demand his execution. I come now to consider the question of the powers of the Government of the United States in the reduction of this rebellion. Sir, we are at war. We are at war with a *de facto* Government. This rebel Government has a written Constitution. It is a Government of power. It has an Executive, Legislature and a Judicial branch similar to that of the United States. It has an army and navy. It has its pretended ministers abroad. It is exercising the highest prerogative of Government, that of conscription and war. It is recognized by foreign powers—France and England—as a *de facto* Government, and has had the rights of belligerents accorded to it by those Governments. We, ourselves, treat it as a *de facto* Government in the exchange of prisoners, etc. They commenced with violence. We are repelling violence. Being at war, we must be governed by the laws of war. It is a fundamental rule laid down by all the writers on the laws of Nations that all means, not condemned by humanity and honor and capable of procuring victory, are allowable. Vattel's Law of Nations, on page 415, says: “*It gives a right of doing against the enemy whatever is necessary for weakening him, for disabling him from making any further resistance in support of his injustice.*”

I desire to call particular attention to the rule here laid down with special reference to the Proclamation of the President granting freedom to the slaves in certain districts that are in-rebellion against the Government. I insist that

the Proclamation is a perfectly legal and legitimate means of weakening the enemy. The Governor, mistaking the true cause of this rebellion at the commencement, has gone on in error. He says, “the Proclamation is clearly impolitic, unjust and unconstitutional.” No man ever committed a greater error. Let us see. The rules and articles of war gives us a right to destroy their armies—to bombard their cities—to invade their territory; in short, to do anything necessary to weaken him. Can these positions be controverted?

Will the Governor's partisans on this floor take issue with me upon these propositions. No Sir, they dare not. The law is too well settled. This Proclamation, giving freedom to between three and four millions of human beings—the very bulwark and strength of this rebellion—calculated as it is, to weaken the enemy, is perfectly legitimate and legal. I desire to read a little further from this same author (Vattel) and on the same page (415): “*An enemy attacking me unjustly gives me an undoubted right of repelling his violence, and he who opposes me in arms, when I demand only my right, becomes himself the real aggressor by his unjust resistance; he is the first author of violence and obliges me to make use of force for securing myself against the wrongs intended me, either in my person or possession. For, if the effects of this force proceed so far as to take away his life, he owes his misfortune to himself, for, if by sparing him, I should submit to the injury, the good would soon become the prey of the wicked.*” And again, the same writer (Vattel), and no one will deny but that the rules laid down by him are recognized by all civilized Nations, at pages 216 and 217, says: “*The offended has a right to provide for his security for the future and to punish the offender by inflicting upon him a pain capable of deterring him afterwards from the like attempts, and intimidating those who shall be tempted to imitate him. He may even, if necessary, put the aggressor out of the condition to injure him. He makes use of his right in all these measures when guided by reason, and if any evil results from it to him, who lays him under the necessity of acting thus, he can accuse none but his own injustice.*” Now, Sir, I submit that by the principles of the law of Nations that any means weakening this rebellion may be used, not condemned by humanity and honor. All the instrumentalities to produce victory may be put into requisition against this infamous rebellion.

The army, the navy; military orders, proclamations, and everything that can be put forth, not only to put down the rebellion, but to provide for our security for the future. *Let us put the aggressor out of the condition to injure us hereafter, and here I especially recognize the utility of the Proclamation.*

Secondly, I propose to consider the Proclamation upon the principles of the Constitution. I must do so briefly,—my time is swiftly passing away. The Constitution of the United States defines treason in the following words: “*Treason*

against the United States shall consist only in levying war against them, or in adhering to their enemies; giving them aid and comfort." The Constitution further provides, that "no person shall be convicted of treason unless on the testimony of two witnesses, to the same overt act, or on confession in open court." Now, by the letter of the Constitution, it will be seen that every rebel who has taken up arms to resist the authority of the Government, has committed treason, and by the laws of the land is guilty of the highest crime known to our laws. But, Sir, are we now, or have we since the rebellion broke out, acted upon the letter of the Constitution? No, Sir, we have not, and could not from the necessity of the case. Sir, if we were acting upon the letter of the Constitution and the law, the courts would be engaged in trying these rebel prisoners, and the marshals at work with their executions. The law of war for the time being takes the place of the letter of the Constitution and the laws, and they are exchanged as prisoners of war. The Governor nor his partisans on this floor have not gone so far as to charge a violation of the Constitution and the laws in this particular. Sir, I justify this Proclamation upon the spirit of the Constitution. I personate the institution of slavery, the cause of the rebellion,—as the assassin putting forth every exertion of power to take the life of the Nation. It is this assassin of slavery that has levied war against the Government. It is therefore slavery that has committed treason against the Government. The Proclamation of the President, aimed as it is at this assassin—slavery, guilty of treason against the Government, is therefore perfectly constitutional. But, Sir, look at the preamble of the Constitution which is as much a part of that instrument as the division of powers therein contained. The first words of the Constitution are as follows: "We, the People of the United States, in order to form a more perfect Union, &c., do ordain and establish this Constitution." I hold that the power to preserve the Union under that Constitution, is an inherent power. This rebellion is determined to break up and destroy this Union,—that purpose is openly avowed, and has been from the beginning. This Proclamation is one of the means put forth for the very purpose of the preservation of the Constitution and the Union.

Thirdly. I contend, Sir, that this Proclamation is sustained upon the principles of the common law. By the principles of the common law, when one who is without fault himself, is attacked by another, in such a manner, or under such circumstances as to furnish reasonable ground for apprehending a design to take away his life, or even to do him some great bodily harm,—such person may defend himself, and even take the life of the assailant, and the killing will be justified. And let me say right here, that the distinction between a proclamation of this character, in a time of peace, or the Proclamation as means to save the life of the Nation, when assailed as it now is, is as plain as the distinction between murder and justifiable homi-

cide. The Governor himself in his message admits that the national life is at stake.

Fourthly, I contend that the proclamation is justified by the law of nature, the law of self-preservation. Vattel, in his treatise at page 358, says: "Nature gives men a right to use force when it is necessary for their defense, and the preservation of their rights. This principle is generally acknowledged; reason demonstrates it and nature herself has engraven it on the heart of man. Some fanatics, indeed taking literally the moderation recommended in the Gospel, have idly suffered themselves to be murdered, or their houses pillaged, rather than oppose force to violence. But we need not be under any apprehension that this error will make any great progress. Most men will naturally defend themselves and their possession." Then again this distinguished author, on page 216, says: "In vain does nature prescribe to nations as well as to individuals, the care of their self-preservation and of advancing their own perfection and happiness, if it does not give them a right to preserve themselves from everything that can render this care ineffectual. * * * Every nation, as well as every man, has therefore a right not to suffer any other to obstruct its preservation, its perfection and happiness, that is, to preserve itself from all injury." Upon the ground of self-preservation, that right given to individuals as well as to nations upon that great first law the Proclamation is sustained. It is a means of preserving the national life.

Sir, I find the principles of the laws of nations, the principles of the Constitution, the principles of the common law, and the principles of nature all in entire harmony. Upon these principles I rest the Proclamation. Sir, that Proclamation is just, legal and constitutional. I might, I think, safely leave this topic here, but inasmuch as the Governor of the State has denounced the Proclamation as unconstitutional, (without, however, giving any reasons for that opinion,) I desire to present a few extracts from speeches delivered on the floor of Congress by one of the most accomplished statesman that this country has produced, directly in point upon this subject. John Quincy Adams said: "I lay this down as the law of nations: I say that military authority takes, for the time, the place of all municipal institutions, and slavery among the rest, and that under that state of things so far from its being true that the states where slavery exists have the exclusive management of the subject not only the President of the United States, but the commander of the army has power to order the universal emancipation of the slaves. * * * From the instant that the slaveholding states became the theatre of war, civil, servile, or foreign, from that instant the war power of Congress extends to interference with the institution of slavery in every way in which it can be interfered with, from a claim of indemnity for slaves taken or destroyed to the cession of states burdened with slavery to a foreign Power. * * * It is a war power. I say it is a war power; and when your country is actually in war, whether

it be a war of invasion or a war of insurrection, Congress has power to carry on the war, and must carry it on according to the laws of war; and by the laws of war an invaded country has all its laws and municipal institutions swept by the board, and martial power takes the place of them. When two hostile armies are set in martial array the commander of both armies have power to emancipate all the slaves in the invaded territory. Nor is this a mere theoretic statement. The history of South America shows that the doctrine has been carried into practical execution within the last thirty years. Slavery was abolished in Colombia first by the Spanish General Morillo, and secondly by the American General Bolivar. It was abolished by virtue of a military command to be law to this day. It was abolished by the laws of war, and not by the municipal enactments."

These instances alluded to so eloquently and truthfully by that great constitutional lawyer and statesman are not the only ones, history furnishes many instances of the same nature. Napoleon performed acts of the same kind. It will be readily recollected by the attentive student of history how heavy the load of obloquy that he brought down upon himself from the despots of Europe when he issued his decree saying "it is not just that one people should be subject to another people. Since the Grisons have refused equal rights to the inhabitants of the Valteline the latter are at liberty to unite themselves with the Cisalpine Republic." This decision was received with bursts of enthusiastic joy by the liberated people, and they were, says the historian, immediately embraced within the borders of the new republic. The proud Grisons were compelled to yield their grasp upon the people whom they had deprived of all political privileges, and had ground down by the most humiliating oppression. Their chains were broken by the decree of Napoleon. Of course the despots howled then as they howl now, but the law of war was inexorable, and the oppressed went free.

I propose now to add the testimony of one of the most distinguished generals in the army—a life-long Democrat—a prominent member of the Democratic Charleston and Baltimore Conventions—I mean General Butler—and then close my remarks on this topic. In his farewell address to the people of New Orleans, he said: "If you desire to leave to your children the inheritance you received of your fathers—a stable, constitutional government—if you desire that they should in the future be a portion of the greatest empire the sun ever shone upon, return to your allegiance. There is but one thing that at this hour stands between you and the Government, and that is slavery. The institution, cursed of God, which has taken refuge here, in his providence will be rooted out as the tares from the wheat, although the wheat be torn up with it. I have given much thought to this subject. I came among you, by teachings, by habit of mind, by political position, by social affinity, inclined to sustain

"your domestic laws, if by possibility they might be with safety to the Union. Months of experience and of observation have forced the conviction that the existence of slavery is incompatible with the safety either of yourselves or of the Union."

I could multiply Democratic authority. General Hunter, another general, &c. These two Democratic generals, Butler and Hunter, from their opportunities for judging, having had important commands in the extreme slave states—having had ample time and opportunity for observation and reflection—ought to be taken as the very best of witnesses on the subject.

I must now pass to the question of arbitrary arrests. I do not propose to occupy your time for any considerable length on this topic. The able and brilliant argument of the gentleman from Chenango (Mr Prindle) remains unanswered, as it is, in my judgment, unanswerable. I understand the Governor's partisans on this floor to deny the power of the Government to make these arrests, and to denounce them as illegal, unjust, unconstitutional, and a usurpation of power. While I do not propose to make any lengthy argument on the subject, I do propose to show these gentlemen that they as a party have the least right to complain. I shall show them that their lips are sealed on the subject; that the Democratic party, by the ratification of the acts of General Jackson at New Orleans, have ratified the exercise of arbitrary power exceeding by far that exercised by the present Government. I will state the facts. General Jackson had the command of the American army at New Orleans during the winter of 1814 and 1815. The British army was under the command of Sir Richard Packenham. The great battle was fought at New Orleans on the 8th day of January, 1815. The treaty of peace had been signed at Ghent on the 14th day of December, 1814—not known, however, to either of the Commanders at the time of the battle on the 8th of January. The city and environs of New Orleans had been declared under martial law on the 16th day of December by General Jackson, converting the city of New Orleans into a camp, and all its citizens into soldiers. On the 18th day of January, ten days after the great battle, the main body of the British army commenced its retreat, and on the day following was safely on board the British fleet, leaving behind some sixty of their wounded. The American army, in a day or two afterward, was withdrawn from their camp below New Orleans to the city. The *Te Deum*, at the request of General Jackson, to show his gratitude to Almighty God, was held at the Cathedral on the 23d of January. The day and night was given up to pleasure both by the soldiers and people. The next day military authority resumed its sway—martial law was supreme. This state of things existed from this time until about the middle of March following. If I misstate a fact I desire to be corrected here on this floor. The British had not only been beaten on the celebrated 8th of January, but had fled from the country and taken shelter on

board their ships. General Jackson had exchanged prisoners with them. Edward Livingston, formerly from our own state, was at that time a prominent member of the New Orleans bar, and acted as aid to General Jackson in the exchange of prisoners, and had been on board the British ships for that purpose. On the 19th of February, Livingston returned to the city of New Orleans with the news of peace. The city was joyful over the news.

The troops expected to be released, the citizens longed to be released from the restraint of martial law. The news of peace was not official. There was, however little doubt of its truth. The people became restive. They could not see the necessity for the enforcement any longer of martial law. The enemy had left the country. News of peace had reached them from a source that satisfied them of its truth. A few days after the return of Livingston an article appeared in one of the papers at New Orleans announcing the conclusion of peace at Ghent. General Jackson immediately caused an official contradiction to be prepared, and sent it to the paper with *an order* that it be inserted in their next issue, and the order further stated that it was expected that nothing of that kind would be published thereafter without permission from the *proper source*. Events now succeeded each other in quick succession. Some of the French soldiers resorted to new expedients to get rid of the restraint of martial law. They applied to the French Consul for certificates of citizenship, and they were granted. General Jackson immediately ordered the French Consul and all Frenchmen not citizens of the United States to depart within three days, and not to return within one hundred and twenty miles of the city until the news of the ratification of the treaty of peace was officially announced. This exercise of power was bitterly complained of in an article published in one of the New Orleans papers. It was claimed in the article alluded to that it was high time the civil laws should resume their sway. Frenchmen were advised not to leave in obedience to the General's orders. Jackson sent an order to the editor of the paper commanding his immediate presence at headquarters. The name of the author of the communication was *demanded* and given.

Gentlemen on the other side of the house complain of the abridgment of the press by the present Commander-in-Chief of the army. I point them to the acts of General Jackson.

Mr. DEAN of New York interrupting—I should like to know upon what authority the gentleman from Cayuga makes his statements?

Mr. POST—I rely principally upon Parton's life of Jackson.

Mr. DEAN—That is the authority upon which I rely, it contains the military orders—

Mr. POST—Then we agree as to the authority.

Mr. DEAN—The gentleman from Cayuga is vilifying the character of General Jackson—

Mr. POST, interrupting, I did not yield the floor to the gentleman from New York to make an argument. I will state the facts and state

them truly. General Jackson did not stop here, two days after the appearance of the article referred to, he caused the arrest of the author, a member of the Legislature, and put him in confinement. Judge Hall upon the proper application issued a writ of *habeas corpus*, directing that the petitioner be brought before him. General Jackson, when the officer appeared to serve the writ, seized it, and retained it, giving the officer a copy, and instead of obeying the writ, ordered the arrest of the judge himself. The judge was arrested and placed in confinement. Here then is Democratic authority in point. The judicial power of the United States set at defiance, *and the judge imprisoned*. Can the Governor or the gentleman on the other side of this house, point me to an act of the President, as arbitrary as that of General Jackson in the imprisonment of the circuit judge of the United States court, because he had presumed to issue a writ of *habeas corpus*? Bear it in mind it was not a court of inferior jurisdiction,—not some local judge with limited powers, *but a judge of the circuit court of the United States*.

General Jackson abridged the freedom of the press. Sent the French consul and French citizens away at a time when our Government was on terms of entire friendship with that Power; and protracted the United States court. But, Sir, I will show that the Government of the United States, ratified these acts of General Jackson, at a time when both branches of the National Legislature was in Democratic hands. Now for the ratification of these acts of General Jackson. And I desire that you should not lose sight of the time and circumstance, under which these acts were performed by Jackson. It was in the month of March, nearly two months after the British had taken refuge on board their ships; it was nearly three months after the treaty of peace had been signed at Ghent; it was nearly a month after the news had reached the General, and even after official information of peace had been received by the lord mayor of the city of New Orleans, and which was known to General Jackson, and so acknowledged in one of the General's orders. The general standing upon the narrow ground, that he had not had official notice of the ratification of the treaty by the President of the United States. It was under such circumstances that General Jackson exercised these high prerogatives. But now for your ratification of these acts. On the 6th day of December, 1843, an act was introduced into Congress by Mr. Ingersoll, a Democratic member of Congress from the State of Pennsylvania, providing "That the sum of one thousand dollars, as a fine, be imposed on him (General Jackson,) at New Orleans, the 31st day of March, A. D. 1815, be paid to him, together with interest, at the rate of six per cent a year." The bill was under consideration several times in Congress, was fully discussed, and on the 8th day of January, 1844, brought to a vote. Mr. Stephens, the same Stephens now the Vice-President of the Rebel Government, moved a substitute, or rather an

amendment, by adding to the bill,—the fact that the said thousand dollars was a fine paid by Jackson for a contempt of the District Court of the United States at New Orleans; and provided, “That nothing therein contained should be intended to be construed as to imply any censure upon the judge who imposed the fine, or in any way to question the propriety of his decision in said case.” And perhaps I ought to state right here, that the views entertained by Mr. Stephens in 1844, correspond with the views of Democrats who have spoken on this floor. They have used the same argument that the opponents of General Jackson used in the debate on the bill for his indemnity. In 1844, the Democracy sustained Jackson’s proceedings at New Orleans, to-day the Democracy use the arguments of his defamers on that occasion. This amendment or substitute was voted down by the emphatic vote of ayes, 38; noes, 122. The bill as originally reported was then put upon its passage, and was carried by the emphatic vote of yeas 158; noes 28. The bill went to the Senate of the United States, and was there passed by a very large majority. It received the official signature of the President of the United States, and thus became the solemn act of the Government. Here was ratification on the part of the Government of the United States, of the arbitrary acts of the General not to be evaded.

The Democratic party in Congress refused to listen for a moment to the proposition of Mr. Stephens, to have a provision in the bill that no censure should be cast upon the judge who had imposed the fine. The ground had been distinctly taken by Mr. Douglas, then a member of Congress, that General Jackson, by virtue of his power as a military commander, had acted within the bounds of military authority. Now in the light of these facts we insist that that the lips of the Democratic party should be closed. Let them frankly own that they were wrong in their ratification of these arbitrary proceedings of General Jackson, or else cease their complaints against Abraham Lincoln. Why, Sir, if they will take the trouble to look over the records of the Legislature of this State, they will find resolutions of instructions to our Senators and members of Congress to support this bill of indemnity to General Jackson. Resolutions of a similar nature had been presented by seventeen or eighteen States all under the control of the Democratic party.

Sir, it seems to me that this clamor over the arrest of a few contemptible beings accused of disloyalty, is merely an excuse for turning their backs upon the Government of their country in its hour of peril and extremity.

The Constitution provides “that the privilege of the *Writ of Habeas Corpus* shall not be suspended unless where in case of ‘rebellion’ or invasion the public safety may require it.” The Constitution is entirely silent upon the question whether the right to suspend the writ belongs to the Executive or Legislative branch of the Government. The President has taken the respon-

sibility, as I think very properly, and has suspended the privilege of the writ.

Sir, it seems to me that the suspension of the writ was an absolute necessity. Judge Taney, so completely under the control of this damning institution, slavery, was ready and anxious to obstruct all military operations by the interposition of the *habeas corpus*. Hon. Reverdy Johnson, of Maryland, perhaps the soundest and ablest constitutional lawyer in the United States, has published his opinion upon the subject, giving his reasons at length, and holds that the President’s conduct was perfectly constitutional. (See *Putnam’s Record of the Rebellion*, Vol. 2, page 185.)

Sir, there is running through the message of the Governor a sort of undefined apprehension about the safety of State rights. No statement of facts is made showing the least ground for such apprehension.

Sir, there has been no interference with our State Government by the National authority. Has Governor Seymour, since he assumed the functions of his office, been in any way interfered with? Not in the slightest particular. Has the Judicial branch of our State Government been molested in any degree? No one will pretend that it has. Has the Legislative branch of the State Government been at all disturbed by the United States Government? Not at all. The disturbance has all come from the other side of the house. We have had serious disturbance, but that disturbance was under the lead of Democratic politicians. A mob was brought here to overawe the representatives of the people.

Sir, I shall never forget the countenances that I saw, during our struggle for an organization, in that gallery. They reminded me of the pictures of the king’s executioners in English history. Rules were set at defiance. The Clerk of the House was told when requested to call the roll that he was there only by sufferance. Day after day the rules that had been adopted for our guide were trampled under foot. A blood-thirsty mob, under the lead of Democratic politicians, thronged the galleries, the lobbies and the approaches to the Assembly Chamber. The Legislature met and adjourned without transacting business in consequence. Sir, the very jewel of Republican Government, the right of the majority to elect, was trembling in the balances. The minority backed by the mob sought to overawe the majority. *They did not succeed.* The majority finally triumphed. The great central principle of Republican Government, the majority principle, was preserved. Order again returned.

It is a misapprehension that our state rights are in danger; and here let me say that while I differ so essentially upon the principal topics of the message from the Governor, it gives me great pleasure to agree with him in what he says near the conclusion of his message, “that he can never voluntarily consent to the breaking up of the Union of these states, or the destruction of the Constitution. I agree with the Governor that under no circumstances can

the division of the Union be conceded. I agree with him that the armies in the field must be supported. And now, Sir, I believe I will close my remarks upon what the message contains. I have a few words to say as to what it does not contain. Sir, I have looked in vain to find a single word of indignation against this infamous rebellion. No heartfelt denunciations of the criminals who are putting forth every exertion to take our national life; nothing about the great mission of Republican Government on this continent. Little or nothing about our achievements as a nation; not a word of encouragement for the future; no adequate portrayal of the danger to our nationality; no exhortation to the people of this great state to rally for the preservation of their Government now staggering from the blow of armed traitors. Why these omissions? I look in vain to find in the Governor's message any statement of the real issue between these rebels and our Government. I am astonished at these omissions. Why, Sir, it seems to me that the real issue should have been stated—stated as it is—stated as it has been by that distinguished Democrat, John Van Buren.

The rebels, with Jeff. Davis at their head, will talk of no term short of a recognition of their Confederacy. Jeff. Davis, Yancey, Wigfall and the whole pack down to the Richmond Dispatch, scout the idea of any reunion with the North. We must, therefore, have war or disunion, that is the issue. Is peace desirable at such a price? God forbid. Peace at the price of disunion? No, never! never! never! Better perish than submit to disunion. War is the only way to peace. Let us then have war, war upon war principles; war until treason is dis-

comfited. Let us have war upon war principles until the authority of the Government is re-established; war until the Union is completely restored; war until we have indemnity for the past and security for the future. Talk of peace is pusillanimous, except upon terms of submission to the Constitution and the Union. Let whatever stands in the way of the Union perish. The object of this war is the preservation of the Constitution and the Union. The army and navy are the chief instrumentalities in war. Let the power of these instrumentalities be increased until they are fully adequate to the performance of their work. I have confidence in the courage and loyalty of the army, it should be, and must be, encouraged, strengthened, and sustained.

The future—the immediate future, I think, must be bloody; I think it is inevitable. The remission of National sin must, I think, come through the shedding of blood. God has brought this Nation to punishment. He will not suffer His laws to be trampled upon with impunity. Oh! may this lesson teach us wisdom. May we learn to be *just*. Notwithstanding our punishments I have no apprehensions as to our final triumph, if we do our duty. We must do that, or we will not succeed. That duty is to stand fast by our country, render it all the aid and assistance in our power. When we shall have done that, we shall find in due time the clouds of war breaking away and the sunlight of peace breaking in. The finger of God is too plainly seen in the history of this people to be mistaken. On this hemisphere the people will regain their rights. Upon the great principles of truth, equality and justice they will triumph.



71.2009.084.05037

